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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/989,352	12/12/1997	STEPHEN B. MAGUIRE	1147-97	8734

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 08/989,352	<b>Applicant(s)</b> MAGUIRE, STEPHEN B.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38, 41-53 and 59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-35 and 41-53 is/are allowed.
- 6) ☒ Claim(s) 36-38 and 59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10082004</u> | 6) <input type="checkbox"/> Other: _____  |

## **FINAL OFFICE ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 OCT 2004 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 8 OCT 2004 (which is equivalent to the one filed 14 JUL 2003 but not considered) has now been considered by the examiner in view of a proper 1449 form being submitted. Note the attached PTO-1449 form.

### ***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 04 APR 2001 have been approved by the Examiner.

4. To remove further issues for allowance, Applicant is required to submit the approved drawing changes on replacement sheets in accordance with the new procedure as outlined below:

37 CFR 1.121 (d) requires that any drawing changes be submitted in compliance with 37 CFR 1.84 on replacement sheets as an attachment to an amendment document. An accompanying detailed explanation of all of the changes should be provided on a separate sheet in the drawing amendments or remarks section of the amendment document. A marked-up copy of one or more of the figures being amended, with annotations, may also be included to provide further explanation of the changes made. The marked-up version must be labeled as "Annotated marked-up Drawings." Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per Sec. 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. No further drawing submission of the amended drawing figure(s) by applicant would be required, unless applicant is so notified.

***Specification***

5. The disclosure is objected to because of the following informalities:
  - a. In the amended paragraph to page 2 (in the response filed 8 OCT 2004), line 5: before "for solid" replace "compartments" with --compartment--
  - b. The amendment to page 23 (in the response filed 8 OCT 2004) does not indicate any amendmentsAppropriate correction is required.
6. The abstract is acceptable.
7. The title is acceptable.

***Claim Objections***

8. Claims 22, 45, and 46 are objected to because of the following informalities:
  - a. Claim 22 indicates that the claim is currently amended yet no changes are shown.
  - b. Claim 45 is awkwardly worded - it appears either "with" or "by" should be deleted in line 2.
  - c. Claim 46 is awkwardly worded - it appears it should read --wherein an axis of rotary motion of said mixing means is perpendicular to said panel.--.Appropriate correction is required.

***Double Patenting***

9. The terminal disclaimer filed 8 OCT 2004 has been approved. The nonstatutory double patenting rejections made in the previous office action are therefore withdrawn

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 36-38 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 4-176608 published JUNE 1992 (made of record on the 1449 form filed 5 DEC 2001).

With respect to drastically amended claims 36-38, JP 4-176608 discloses a gravimetric blender comprising a housing (Fig. 2); a topless openable weigh bin 16 (see Fig. 4a) connected to said housing, means 36 connected to the housing for sensing weight of the material in the bin 16; a mix chamber 40 below said bin and connected to said housing and including mixing means 42 therewithin; means 24, 38 for selectively opening said bin for releasing material in said bin 16 downwardly into said mix chamber 40; the bin 16 bottom portion includes a sloped openable bottom (Fig. 4a); wherein said bin 16 includes at least two parallel sides 26, 28.

With respect to new claim 59, JP 4-176608 discloses a housing (Fig. 2) defining an openable enclosure (window panel 50 is removable from the housing via screw 52 -

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see the translation page 5, second paragraph and page 9, penultimate line through page 10, line 8); a topless bin 16 (see Fig. 4a) within said housing enclosure and having an openable bottom 32; means 30, 38 having said bin 16 removably suspended therefrom and being connected to said housing, for sensing weight of material in said bin (Fig. 4a); a mixer 40 being below said bin, within said enclosure and connected to said housing; and means 24, 38 for selectively opening said bin 16 for downwardly releasing, within said enclosure, material in the bin 16 to the mixer 40.

12. Claims 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 59-82936 published MAY 1984 (made of record on the 1449 form filed 8 OCT 2001).

With respect to drastically amended claims 36-37, JP 59-82936 discloses a gravimetric blender comprising a housing (Figs. 1-2); a topless openable weigh bin 5 connected to said housing, means 6 connected to the housing for sensing weight of the material in the bin 5; a mix chamber 8 below said bin and connected to said housing and including mixing means 39 therewithin; means 7, 36, 37 for selectively opening said bin for releasing material in said bin 5 downwardly into said mix chamber 8; the bin 5 bottom portion includes a sloped openable bottom (Figs. 1-2);

***Allowable Subject Matter***

13. Claims 1-35 and 41-53 are allowable over the prior art of record.

***Response to Amendment***

14. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by the significant broadening of claims 36-38 and the presentation of new claim 59 which claims are each met by prior art already made of record. A complete copy of the already cited JP 59-82936 document is provided on the attached PTO-892 form for Applicant's convenience.

***Conclusion***

15. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles E. Cooley".

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

3 NOV 2004